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How Will New Reporting Requirements Impact Your Business in 2024? Beneficial Ownership Reporting Under the Corporate Transparency Act

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Beginning in 2024, a significant number of foreign and domestic businesses in the United States will be required to report information on their businesses, owners, senior officers, and key decision-makers, under the Corporate Transparency Act (CTA). Due to the broad reach of the CTA, business owners of all sorts must understand the reporting requirements of the CTA and how the requirements will impact their business in 2024 and beyond.

The CTA tasked the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) with implementing a federal reporting system to identify the beneficial owners of domestic and qualified foreign businesses. The reporting system's purpose is to grant law enforcement authorities greater access to individuals suspected of committing crimes through the use of shell companies, such as tax fraud and money laundering. Information generated from the reporting system may be accessed by federal, state, local, and tribal governments and associated government agencies, along with foreign law enforcement agencies, and financial institutions.

The consequences of noncompliance with the CTA's reporting requirements for businesses and business owners will range from civil fines of $500 per day to criminal penalties which may involve a two-year prison sentence and up to a $10,000 fine. The CTA also imposes liability for the failure to correct inaccuracies in reporting and for failing to provide updated reporting information based on changes to a company, its ownership, or management.

What Businesses Must Report and What Information Must be Reported?

Commonly formed business entities such as corporations and limited liability companies, along with other businesses that are created by filing a document with a state or tribal government are required to report under the CTA. Similarly, foreign businesses that are registered to do business in the U.S. are required to report. Businesses required to report under the CTA are considered "Reporting Companies."

Businesses meeting any of the 23 exemptions from the CTA's reporting requirements are not required to report under the CTA. Common exemptions from the CTA's reporting requirements include: (1) Publicly traded or registered companies; (2) Large Operating Companies; (3) Inactive Entities; and (4) certain subsidiaries.

1. **Publicly Traded or Registered Companies.** This group of entities is exempt from reporting under the CTA as they are subject to specific public registration and/or filing requirements. Examples of these entities include: issuers of securities and broker-dealers registered under the Securities Exchange Act, Investment Companies and Investment Advisors registered under the Investment Advisor Act, among others.
2. **Large Reporting Companies.** Larger companies that meet the following criteria are exempt from reporting under the "Large Reporting Company" reporting exemption. To meet this exemption a company must: (a) have more than 20 full-time employees (as defined by the Internal Revenue Code); (b) operate a physical office in the US; and (c) have filed a tax return for the previous year containing over $5,000,000 in gross receipts from US sources. Companies that may qualify for this exemption should be aware that the calculation of the gross receipts will depend on the type of tax return a business has filed. For further inquiries on how the gross receipt requirement applies to your business, please reach out to us for guidance tailored to your company.
3. **Inactive Entities.** Companies that have not been actively operating are exempt from reporting under the CTA's "Inactive Entity" exemption. To qualify a business must: (a) existed prior to January 1, 2020; (b) is not owned by a foreign person—either directly or indirectly, or wholly or partially; (c) has not undergone a change in its ownership in the previous twelve months; and (d) does not hold any assets, including the ownership interests of another business or entity.
4. **Certain Subsidiaries.** In certain circumstances business subsidiaries are exempt from the CTA's reporting requirements. In the event a subsidiary is wholly owned by a company that is exempt from the CTA's reporting requirements, the subsidiary is only required to identify its parent company for reporting purposes and is not required to provide information on the individual that ultimately owns/controls the parent company.

What Information Must Reporting Companies Provide? Under the CTA, a Reporting Company must provide (a) its legal name, along with any trade names or D/B/As, (b) the address of its principal place of business, (c) the jurisdiction of its formation or registration, and (d) its taxpayer identification number.

What Individuals Must Report and What Information Must be Reported?

Individuals deemed "Beneficial Owners" of Reporting Companies must report personal information under the CTA.

Who is a "Beneficial Owner"? A Beneficial Owner subject to the CTA's reporting requirements is an individual that either: (1) has substantial managerial control over a Reporting Company or (2) directly or indirectly owns over 25% of the ownership interests of a Reporting Company.

1. **Individuals with Substantial Managerial Control.** In this instance, reporting requirements apply to any individual who has the authority to influence, direct, or determine important decisions made by the Reporting Company. For example, a manager who has the power to spend or invest large sums of a company's money or a manager who has the power to select or terminate certain business lines of a company would be required to register as these managers have substantial authority to direct the company's business. Individuals included within this group also include senior officers such as a President, CEO, or CFO.
2. **Individuals That Own 25% or More of Reporting Company.** Reporting requirements apply to individual owners of Reporting Companies that hold more than 25% of the company's ownership interests. While the CTA requires reporting for holders of standard equity interests such as ownership of common stock, membership interests, or membership units, the CTA also requires holders of more than 25% of other types of equity interests to report. For example, reporting requirements apply to an owner of stock options if the exercise of the options results in the owner owning more than 25% of a Reporting Company's common stock—even if those holders have not exercised the option to purchase stock at the time of reporting. In general, the CTA requires registration for owners of a wide variety of interests such as capital interests, profit rights, and classes of stock or membership interests. In these instances, specific calculations are used to determine whether an individual holds at least 25% of such interests.

Information Required to be Reported by Beneficial Owners. Individuals that fall into the two categories described above must provide the following information: (a) full name; (b) date of birth; (c) address; and (d) a driver's license, passport, or other government-issued identification document.

Reporting Deadlines

While the reporting requirements will begin in 2024, companies and individuals who are required to report must be aware of reporting deadlines to ensure compliance with the CTA. There are two filing deadlines companies should be aware of and will depend on the date the company is formed.

- Existing businesses will have until January 1, 2025, to report. For example, if a Reporting Company is formed on June 1, 2014, that Reporting Company and its Beneficial Owners must report on or before January 1, 2025.
- Those who plan on forming businesses subject to the CTA's reporting requirements in 2025 and beyond must report within 30 days of the formation of the business. For example, if a Reporting Company is formed on March 1, 2025, that Reporting Company and its Beneficial Owners must report on or before March 30, 2025.

Reporting of Changes

For any changes or inaccuracies as to the information provided by a Reporting Company or its Beneficial Owners, the CTA requires that such changes must be recorded within 30 days. For example, if a Reporting Company's ownership changes due to an acquisition, merger, or business succession, that change must be reported within 30 days of the occurrence. In addition, new Beneficial Owners must report within 30 days of qualifying as a Beneficial Owner. For example, if a Reporting Company names a new Chief Executive Officer who did not previously report, within 30 days of that change, the CTA would require the new Chief Executive Officer to report as a Beneficial Owner.

These examples highlight just a few of the vast implications the CTA will have on what were previously considered ordinary corporate governance matters. While the particular reporting form framework is pending and filing deadlines remain a distant concern, companies and individuals who are required to report under the CTA should take steps to ensure compliance with the reporting requirements under the CTA. At Lippes Mathias, we are prepared to guide our clients through these broad changes and offer tailored advice suited to each client's needs. For more information and guidance on the changes the CTA will bring to your company, please reach out to Lippes Mathias corporate team members Brendan J. Rich (brich@lippes.com) or Brandon M. Le (ble@lippes.com).

Research and contributions for this alert were made by Brandon M. Le (Associate, Corporate Team) and Ian A. Klak (Paralegal, Corporate Team) and reviewed by Brendan J. Rich (Partner, Team Leader - Corporate Team).

Related Team

Brendan J. Rich
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